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IN THE UNITED STATES DISTRICT COURT FOR JUL 10 2007
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Michael P. McGinn,
Plaintiff,
vs.
BNSF RAILWAY COMPANY,
Defendant.

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

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07CV 3851
JUDGE LEFKOW
MAGISTRATE JUDGE ASHMAN
JURY TRIAL DEMANDED

COMPLAINT

(Federal Employers' Liability Act)

COMES NOW Plaintiff, Michael P. McGinn, by and through his attorneys, Holland, Groves, Schneller & Stolze, L.L.C., and for his cause of action against Defendant BNSF Railway Company, states:

1. Defendant BNSF Railway Company is now and was at all times hereinafter mentioned a railroad corporation duly organized and existing according to law to engage in, and was engaged in, business as a common carrier in interstate commerce between the several states of the United States.
2. That at all times relevant herein, including the present, Defendant has operated trains, owned tracks and yards and other property in the counties of the State of Illinois comprising the Northern District of Illinois.

3. That at all times hereinafter mentioned, Plaintiff was a resident of Minooka, Illinois within counties of the State of Illinois comprising the Northern District of Illinois.

4. That at all times hereinafter mentioned, the Plaintiff and the Defendant BNSF Railway Company, were employed and engaged in interstate commerce and by reason thereof their mutual and respective rights and liabilities were governed by a certain Act of Congress, known as the Federal Employer's Liability Act, 45 U.S.C. Section 51-60. That this action is properly venued in this Court under the FELA and that this Court has jurisdiction pursuant to 28 U.S.C. 1331, Federal Question Jurisdiction.

5. That on or about January 17, 2005 while employed for the Defendant BNSF Railway Company, Plaintiff was working for defendant as a conductor at or near milepost 58 in the Mored siding, at or near Hinkley, Illinois while plaintiff was performing a class one air brake test when insufficient/improper ballast caused him to slip and injure his spine, among other things.

6. That at said time and place, the defendant, BNSF, was guilty of one or more of the following acts or omissions of negligence, carelessness, and/or recklessness:

- (a) It failed to provide reasonably safe conditions for work; or
- (b) It failed to provide a reasonably safe walkway; or
- (c) It failed to provide reasonably safe methods of work; or
- (d) It failed to provide reasonably adequate and/or sufficient help; or
- (e) It failed to provide plaintiff with a reasonably safe place to work; or

- (f) It failed to properly inspect, test, maintain or repair its ballast; or
- (g) It failed to provide adequate lighting; or
- (h) It failed to comply with 92 IL ADC § 1546.20, constituting negligence per se.

7. As a direct and proximate result, in whole or in part of one or more of the foregoing negligent or unlawful acts on the part of the defendant, BNSF, the plaintiff, Michael McGinn, was caused to suffer the following serious, painful, and permanent injuries, to-wit: Plaintiff suffered injuries to his spine, and the vessels, nerves, ligaments and the adjacent structures thereto; Plaintiff has been required to seek medical treatment and will so in the future; Plaintiff has been required to undergo various diagnostic tests and will so in the future; Plaintiff has lost the wages of his employment and will in the future lose further wages; Plaintiff has sustained injuries and pain and suffering and will so in the future; Plaintiff has expended or obligated himself for necessary and reasonable medical expenses and hospital care and will so in the future; Plaintiff has suffered psychological and emotional injuries; Plaintiff's ability to work, labor, and enjoy the normal pursuits of life has been impaired and lessened all to plaintiff's damages.

WHEREFORE, Plaintiff, Michael P. McGinn, prays Judgment against Defendant BNSF Railway Company, for a sum fair and reasonable under the circumstances in excess of One Million Dollars (\$1,000,000.00) together with his costs herein expended.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues so triable.

HOLLAND, GROVES, SCHNELLER & STOLZE, L.L.C.



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